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Zimbabwe: Treatment of sexual minorities, including legislation, state protection, and support services (2009-March 2012)

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1. Legislation

Sources indicate that "sodomy" is illegal in Zimbabwe (ILGA n.d; Zimbabwe 2004, Art. 73). Zimbabwe's *Criminal Law (Codification and Reform) Act*, indicates that sodomy is a crime against the state and is:

1. Any male person who, with the consent of another male person, knowingly performs with that other person anal sexual intercourse, or any act involving physical contact other than anal sexual intercourse that would be regarded by a reasonable person to be an indecent act, shall be guilty of sodomy and liable to a fine up to or exceeding level fourteen or imprisonment for a period not exceeding one year or both.
2. Subject to subsection (3), both parties to the performance of an act referred to in subsection (1) may be charged with and convicted of sodomy.
3. For the avoidance of doubt it is declared that the competent charge against a male person who performs anal sexual intercourse with or commits an indecent act upon a young male person --
 - a. who is below the age of twelve years, shall be aggravated indecent assault or indecent assault, as the case may be; or
 - b. who is of or above the age of twelve years but below the age of sixteen years and without the consent of such young male person, shall be aggravated indecent assault or indecent assault, as the case may be; or
 - c. who is of or above the age of twelve years but below the age of sixteen years and with the consent of such young male person, shall be performing an indecent act with a young person. (Zimbabwe 2004, IV, Ch. 3, Art. 73)

According to the US Department of State's *Country Reports on Human Rights Practices for 2010*,

[a]lthough there was no statutory law proscribing homosexual conduct,

common law prevents gay men, and to a lesser extent, lesbians, from fully expressing their sexual orientation and, in some cases, criminalizes the display of affection between men. (8 Apr. 2011, 65)

Country Reports 2010 also indicates that the fine for sodomy is up to \$5,000 (US 8 Apr. 2011, 65). However, Gays and Lesbians of Zimbabwe (GALZ), a volunteer organization that provides social, counselling, and educational services to sexual minorities in Zimbabwe, and advocates for the "repeal of homophobic legislation" (GALZ n.d.g), says that because fines are set from levels 1 to 14, they vary and they are also changed periodically by regulation (ibid. n.d.h).

1.1 Legal Status of Lesbian, Bisexual, Transgender (LBT) Women

GALZ indicates that although sex between women is not criminalized in Zimbabwe (GALZ 22 Apr. 2009; ibid. n.d.e), women can be charged with "indecent exposure" (ibid.). In an interview with the author of a report by Oxfam on the status of sexual minorities in southern Africa, a gender program manager at GALZ reiterated that although the law is "quiet on women," it does not provide them any "protection" either (Oxfam Feb. 2009, 14). Elsewhere GALZ argues that because the constitution does not include any protection for lesbians, they are as "equally vulnerable to discrimination as their male counterparts, perhaps even more so given their status as women who are generally not recognised as having the right to their own sexuality" (22 Apr. 2009). The organization also maintains that LBT women have been affected by the criminalization of homosexuality through the country's so-called "'sexual deviancy' law" (ibid. 6 Jan. 2012, 6), what some call the *Criminal Law (Codification and Reform) Act* since it expanded what constitutes sodomy in 2006 (*The Zimbabwe Gazette* 13 Feb. 2008).

1.2 LGBT Constitutional Rights

Sources state that Zimbabwe's constitution does not recognize the rights of gays and lesbians (GPI 4 Dec. 2009; *The Zimbabwe Mail* 24 May 2010; ILGA 28 Feb. 2012). According to the Global Press Institute, an international news service and citizen journalism initiative for women in developing countries (n.d.), activists have been advocating for the protection of the rights of lesbian, gay, bisexual and transgender (LGBT) people in the constitution since 1995, but President Mugabe, known for his "anti-gay views," has ignored them (4 Dec. 2009). However, following their agreement to share power in 2009, Prime Minister Morgan Tsvangirai and President Mugabe agreed to draft a new constitution by July 2010, although the date has been delayed several times (VOA 29 Mar. 2012). Activists continued to press for the inclusion of LGBT rights in the new constitution, but have been refused by both President Mugabe and the Constitution Selection Committee (*The Zimbabwe Mail* 24 May 2010), which was tasked by the country's parliament with developing the new constitution (ILGA 28 Feb. 2012). The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) writes that a draft of the new constitution released in February 2012 "contained no provisions to protect gay and lesbian rights" (ibid.).

2. Attitudes Towards and Treatment of LGBT Persons by Society

Sources indicate that homophobia is prevalent in Zimbabwe (GALZ n.d.d; US 8 Apr. 2011, 66). According to the Global Press Institute, there is an "ingrained cultural, religious and political prejudice toward lesbians and gays"

(4 Dec. 2009). GALZ indicates that "most" LGBT people in Zimbabwe live "underground" (22 Apr. 2009). Similarly, *Country Reports 2010* indicates that it is a challenge for sexual minorities to be public about their sexuality (US 8 Apr. 2011, 66). The US report also states that LGBT people experienced "widespread societal discrimination" in 2010 (US 8 Apr. 2011, 66). Amnesty International writes in its annual report on human rights that LGBT people faced "persecution" in 2010 (2011).

The Global Press Institute states that LGBT people are "often forced to endure degrading verbal assaults" (GPI 4 Dec. 2009). GALZ indicates that some LGBT people may be evicted from their homes, fired from their jobs (n.d.d), and denied employment (6 Jan. 2012, 5). *Country Reports 2010* explains that LGBT people dropped out of school early and experienced higher rates of unemployment and homelessness than other Zimbabweans (US 8 Apr. 2011, 66). GALZ adds that LGBT people often live in "extreme" poverty (6 Jan. 2012, 3). During its interview with the GALZ gender program manager, Oxfam concluded that there is little information about the situation of "intersex" people in Zimbabwe (Feb. 2009, 15).

2.1 Blackmail

According to GALZ, blackmail is a "particular problem" for homosexuals in Zimbabwe (n.d.e). Although it is "almost exclusively a gay-male phenomenon," the organization has taken on "a few cases" of attempted blackmail of lesbians (GALZ n.d.e). GALZ adds that blackmail usually occurs when one partner, financially dependent on the other, blackmails his wealthy partner when the relationship ends to continue receiving money; or when a sexual partner threatens to report the other individual for having transmitted HIV to him, which could result in up to 15 years in jail (n.d.e). Author and guest lecturer Oliver Phillips, writing in an International Gay and Lesbian Human Rights Commission publication on the blackmail and extortion of LGBT people in sub-Saharan Africa, indicates that instances of blackmail have increased with the Mugabe government's homophobic statements (IGLHRC 2011a, 2, 30). According to a Zimbabwean lawyer affiliated with GALZ, police in a "homophobic society" are more likely to believe the blackmailer than the person being blackmailed (ibid. 2011b, 2, 119-120).

2.2 Treatment of LBT Women

Sources indicate that some women have been subjected to so-called "'corrective'" rape (IPS 2 Dec. 2010; US 8 Apr. 2011, 66). *Country Reports 2010* indicates that their families sometimes subjected LBT women to "corrective rape" and forced marriages to "encourage heterosexual conduct," and that these crimes are "rarely" reported to police (ibid.). According to the Inter Press Service, the reports of "'corrective rapes'" of women "thought to be lesbians" has increased in Zimbabwe (2 Dec. 2010). GALZ adds that LBT women also face "physical, verbal and psychological abuse" and are often denied custody or access to their children (6 Jan. 2012, 5). The GALZ gender program manager told her Oxfam interviewer that there has been an increase in hate crimes against lesbian women (Oxfam, Feb. 2009, 14). She also said that hate crimes against men are "'not as bad as they used to be'," although they are often not reported (ibid., 15).

2.3 Treatment by the Health Care Profession

Sources indicate that homophobia is prevalent in the health care sector (GPI 4 Dec. 2009; GALZ 6 Jan. 2012, 6). The Global Press Institute states that sexual minorities are excluded from government health care initiatives (4 Dec. 2009). The Global Press Institute has also indicated that, "[t]he culture of discrimination and fear has ... altered policy in Zimbabwe to prevent access to sexual and reproductive health care services for sexual minorities" (4 Dec. 2009). Sources also indicate that health providers who treat LGBT people often have negative attitudes about them (*The Zimbabwe Mail* 27 Oct. 2011; GPI 4 Dec. 2009). According to a senior medical doctor at the United Bulawayo Hospital, "[s]ome doctors even provide counselling to gays and lesbians in an effort to rehabilitate them" (ibid.). GALZ indicates that health staff "ridicule" LGBT people seeking medical care (n.d.d). Due to the stigma associated with being a sexual minority, many LGBT people reportedly do not seek medical attention for their health concerns (GALZ 6 Jan. 2012, 6; US 8 Apr. 2011, 66).

3. Treatment of LGBT People by Authorities

3.1 Government Attitudes

Sources report that homophobia is prevalent in the government (GPI 4 Dec. 2009; *The Zimbabwean* 1 July 2011). According to GALZ, the government has "encouraged people to make citizens arrests of 'gays' should they see them in the streets" (n.d.e). Similarly, the Global Press Institute reports that when activists demanded that LGBT rights be included in the constitution, President Mugabe called for the "immediate arrest of anyone 'caught practicing homosexuality'" (4 Dec. 2009). Sources also indicate that President Mugabe has made derogatory comments about sexual minorities, such as that they are "'worse than pigs and dogs'" (*The Zimbabwe Mail* 24 May 2010; US 8 Apr. 2011, 65; BBC 24 Oct. 2011). Prime Minister Tsvangirai used to echo President Mugabe's anti-gay sentiments; however, during an interview by the BBC in October 2011, he reportedly stated that gay rights are human rights (*The Zimbabwe Mail* 27 Oct. 2011; GALZ 26 Oct. 2011; BBC 24 Oct. 2011), and that they should be included in Zimbabwe's new constitution (*The Zimbabwe Mail* 27 Oct. 2011; BBC 24 Oct. 2011). The *Zimbabwe Mail* reports that the Prime Minister's statement came as the lobby for LGBT rights is growing in the country and after the government agency, the National Aids Council, recommended that homosexuality be decriminalized to ensure that men who have sex with men have access to "safe-sex initiatives" (27 Oct. 2011). The BBC adds that Tsvangirai made his comments before a draft of the new constitution was expected to be put to a referendum and before elections (24 Oct. 2011). Tsvangirai reportedly stated that although there is a "'very strong cultural feeling' against homosexuality in Zimbabwe," he would "defend gay rights" if he was president (BBC 24 Oct. 2011).

3.2 Police Treatment

The Global Press Institute states that police "often enforce" the *Criminal Law (Codification and Reform) Act*, and that the result has been "widespread arrests" (4 Dec. 2009). Sources report that, in August 2010, several high school girls were arrested in Bulawayo for "engaging in homosexual activities" (*The Zimdiaspora* 3 Aug. 2010; *The Zimbabwe Mail* 3 Aug. 2010). The *Zimbabwe Mail* writes that the girls were held in jail for a day until being released into the custody of their parents, and that they were expected to appear in court (ibid.). According to the Zimbabwe Broadcasting Corporation, in August 2011, five men were arrested for "committing acts of sexual immorality" (9 Aug. 2011). According to *Country Reports 2010*, there are "no known cases of sodomy charges being used to prosecute consensual homosexual activity" (US 8 Apr.

2011, 65).

The *Zimbabwe Mail* reports that "some individuals have been prosecuted and convicted for their sexual orientation" (3 Aug. 2010). ILGA says that police constantly harass gays and lesbians through "arbitrary arrests, beatings, and even assassinations" (Feb. 2012). Corroborating information about assassinations could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Police ordered LGBT activists and sex workers to leave a demonstration in Bulawayo marking the "16 days of Activism" organized to protest violence against women, citing as the reason that homosexuality is illegal (IPS 2 Dec. 2010; US 8 Apr. 2011, 66).

3.2.1 Police Treatment of GALZ Members

Sources report that, in 2010, police raided the home of the Director of GALZ (US 8 Apr. 2011, 65) and the GALZ office (ibid.; GALZ 24 May 2010; AI 2011). The police, looking for "dangerous drugs and pornographic material" (*The Zimbabwe Mail* 22 May 2010; US 8 Apr. 2011, 65), searched the office and personal email accounts (ibid.; WRI 25 May 2010), seizing documents and computers (*The Zimbabwe Mail* 22 May 2010) and arresting two GALZ staff members (ibid.; US 8 Apr. 2011, 65; GALZ 24 May 2010). GALZ linked the arrest of the two staff members to "the opening of a national Constitutional Reform Outreach Program, through which GALZ [was] seeking to remove discriminatory provisions and secure constitutional protections" for LGBT people (IGLHRC 30 May 2010). *Country Reports 2010* states that the GALZ staff members were "acquitted on the charge of possessing pornographic materials" (US 8 Apr. 2011, 66), however sources indicate that the two staff members were charged with "undermining the authority" of President Mugabe (WRI 25 May 2010; US 8 Apr. 2011, 65). Sources indicate that these GALZ staff members were beaten while in police custody (ibid.; IGLHRC 30 May 2010).

Police have also arrested GALZ members (ibid. 1 Apr. 2011; GPI 4 Dec. 2009). The GPI indicates that the former director of GALZ was arrested and detained on "several occasions" for engaging in gay and lesbian activism (4 Dec. 2009). GALZ reports of two separate incidents in 2011 in which a male member and four male friends were charged with disorderly conduct and two female members were detained on the basis of allegations that they were practicing homosexuality (1 Apr. 2011). GALZ has expressed concern about "arbitrary detentions" of its members (1 Apr. 2011).

4. NGO Support Services

GALZ is the only LGBT organization in Zimbabwe (Oxfam Feb. 2009, 14; US 8 Apr. 2011, 65; *The Zimbabwe Mail* 27 Oct. 2011). Although GALZ had around 500 members in 2000, the organization states that its membership is now about 300 since "many members ... left the country to seek asylum" (GALZ n.d.f). In order to become a GALZ member and use its services, individuals must be over the age of 18 (ibid. n.d.c). GALZ requires members to pay fees that "alter on a yearly basis, but are always affordable. Those who are less resourced may apply for a reduction of up to 90% of the fee" (ibid.). Membership entitlements include the use of the GALZ Centre in Harare, information about GALZ social events, a reduction of charges to GALZ events, free access to counselling, and "professional legal advice on issues such as blackmail" (ibid.).

The GALZ Centre is described by GALZ as a "safe haven" for members to meet each other (n.d.b). The Centre also includes a library and video club (GALZ n.d.b). Information on whether people can stay at the GALZ Centre and for how long could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. However, the GALZ website states that the organization runs a program called the GALZ Safety Net to provide "urgent relief to members in an emergency," such as eviction from their homes (GALZ n.d.a). The program provides counselling, food, and shelter for 72 hours (n.d.a).

According to the GALZ website, the GALZ Health Department provides assistance to members who experience anxiety, depression, alcohol abuse, or suicidal thoughts as a result of homophobia (n.d.d). GALZ also provides HIV counselling, a referral system to "gay-friendly" health care workers, and information pertaining to men who have sex with men and women who have sex with women (GALZ n.d.d). The GALZ Positive Support Group, GALZ+, provides psychosocial support for members who have HIV or who have been affected by the virus (ibid.). Information on the effectiveness of GALZ services could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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